IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1403 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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HIMAT GULAB RATHOD (CHHARA) - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR HR PRAJAPATI for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
SERVED BY RPAD - (R) for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 16/12/2005

ORAL JUDGMENT

1.Himat Gulab Rathod (Chhara), petitioner has filed this petition under Article 226 and 227 of the Constitution

of India with a prayer that this Court may be pleased to issue writ of mandamus for quashing and setting aside the impugned order dated 11/7/2005 passed by the Deputy Commissioner of Police, Ahmedabad, respondent no.2 under Section 59(b) of the Bombay Police Act, 1951, externing the petitioner for a period of two years from certain areas of Ahmedabad, Ahmedabad City, Gandhinagar, Mehsana and Kheda and further be pleased to quash and set aside the order of the Deputy Secretary, Home Department, New Sachivalaya, Gandhinagar, Appellate Authority, respondent no.1 dated 29/9/2005, by which, the order of externment is confirmed as being illegal, invalid, null and void, suffers from total non-application of mind, without authority of law, against the principles of natural justice and violative of Articles 14, 19 and 21 of the Constitution of India. Petition has been filed on 11/10/2005.

2. When the matter was placed for hearing before this Court on 21/10/2005, my brother justice Mr.A.S.Dave, has issued Rule which is returnable after four weeks. Therefore, the has come up for final hearing to this Court today.

3.Mr.H.R.Prajaptai, learned advocate has invited my attention to the provisions of the Bombay Police Act and he has stated that externment order has been passed on 11/7/2005, externing the petitioner from certain areas of Ahmedabad, Ahmedabad City, Gandhinagar, Mehsana and Kheda. The learned counsel has invited my attention to the notice dated 13/4/2004 issued by the Additional Police Commissioner under the provisions of the Bombay Police Act. He has stated that petitioner has filed reply on 25/10/2004 and thereafter, on 11/7/2005, the authority has passed an order of externment, externing the petitioner from Ahmedabad, Ahmedabad City, Gandhinagar, Mehsana and Kheda for the period of two years. The learned counsel for the petitioner has submitted that from the date of show cause notice i.e. 13/4/2004, the authority has passed order on 11/7/2005 i.e. almost one year of the notice. He has stated that the authority has not explained any delay as to why the order has been passed after such delay. The authority has not filed any affidavit in reply also justifying the delay in this behalf.

4.He has stated that there are several grounds in the

petition but he confined to only one ground that the order passed by the authority is bad in law as the same has been passed after considerable delay in this behalf. As he has stated that the delay is unexplained delay and it was avoidable delay and therefore, the order of externment is required to be quashed and set aside. For the same, the learned counsel for the petitioner has relied upon the judgment of this Court (Coram: K.M.Mehta, J.) in the case of Dilaji Bharthaji Vihol v. Deputy Commissioner of Police and another in Special Criminal Application No.1451 of 2005 decided on 1/12/2005.

5. On behalf of respondent, Mr.L.R.Pujari, learned APP appears. He has supported the order of externment on the grounds stated therein. He has also stated that there is no factual foundation in the order that on what basis the order has been passed.

6. I have heard both the counsels in this behalf. I have considered the provisions of Section 56 and 59 of the Bombay Police Act and also considered unreported judgment of Division Bench of this Court in the case of Vasantiben Mukeshbhai Rander v. State of Gujarat

decided on 24/6/1995. I have also considered the Division Bench judgment of this Court in the case of Chothamal Sagansingh Rajput v. State of Gujarat and others, reported in 1989 (30) (1) GLR 63, judgment in the case of Sitaben M.Thakore v. Deputy Commissioner of Police, reported in 1997 Cr.Lr.(Guj.) 139 GLH and judgment of this Court (Coram:K.M.Mehta, J.) in the case of Dilaji Bharthaji Vihol in Special Criminal Application No.1451 of 2005 decided on 1/12/2005.

7. From the records, it appears that in this case, show cause notice has been issued on 13/4/2004 whereas the order of externment has been passed on 11/7/2005. In my view the authority has not explained delay therefore, there is unexplained delay and therefore, the order of externment is required to be quashed and set aside on the ground of delay. Taking overall view, in my view the authority should come before this Court to show his subjective satisfaction before passing the order of externment. In this case, the authority has passed order of externment after unavoidable delay which could have been avoided.

8. It may be noted that the appellate authority should

consider the binding decisions of this Court on the ground of delay. Hence, the said order is also liable to be quashed and set aside.

9. In the result, petition is allowed. Order of externment dated 11/7/2005 is quashed and set aside and order dated 29/9/2005, confirming the order of externment is also quashed and set aside. Rule is made absolute with no order as to costs. Direct service is permitted.

(K.M.MEHTA, J.)

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